

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6811

BILL NUMBER: HB 1184

NOTE PREPARED: Dec 30, 2008

BILL AMENDED:

SUBJECT: Various Immigration-Related Matters.

FIRST AUTHOR: Rep. Murphy

BILL STATUS: As Introduced

FIRST SPONSOR:

FUNDS AFFECTED: X GENERAL
X DEDICATED
X FEDERAL

IMPACT: State & Local

| STATE IMPACT | FY 2009 | FY 2010 | FY 2011 |
|-------------------------|---------|--------------|--------------|
| State Revenues | | | |
| State Expenditures | | 15,000,000 | 15,000,000 |
| Net Increase (Decrease) | | (15,000,000) | (15,000,000) |

Summary of Legislation: This bill establishes the 287(g) agreement grant program. The bill allows the Indiana Department of Homeland Security (DHS) to provide grants to certain police enforcement agencies.

The bill prohibits a child more than 12 years of age but less than 14 years of age from working as a farm laborer unless the farm is owned by a person who is related to the child by blood, marriage, or adoption. The bill also increases civil penalties for violations of certain age labor laws.

This bill provides that: (1) a person who counterfeits or falsely reproduces a driver's license with intent to use the license or to permit another person to use the license commits a Class D felony (instead of a Class B misdemeanor); and (2) a person who knowingly or intentionally produces or distributes a document that is not issued by a government entity and that purports to be a government-issued identification commits a Class C felony (instead of a Class A misdemeanor). It also makes making or distributing a forged instrument a Class B felony.

The bill appropriates \$10,000,000 to the Department of Education from the state General Fund for each year of the biennium beginning July 1, 2009, and ending June 30, 2011. The bill also appropriates \$5,000,000 to the Indiana Department of Homeland Security from the state General Fund for each year of the biennium beginning July 1, 2009, and ending June 30, 2011.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *287(g) Program:* The bill appropriates \$5 M per fiscal year during the biennium to DHS in order to provide law enforcement with resources that are intended to aid in the application and administration of the federal 287(g) program. The bill will increase workload of DHS in order to establish procedures for reviewing grant applications and determining award amounts. [Note: The legislation is silent on whether a grant is intended to cover the entire costs of the 287(g) program for those law enforcement agencies that apply, or if it is intended to offset some program costs.] The total appropriation for the 287(g) program for the biennium is \$10 M.

Under the program, the Indiana State Police might experience an increase in administrative expenditures to apply for the program, provide officer training, and enforce the provisions of the program. State expenditures would depend on the number of officers trained and additional number of persons incarcerated for a federal immigration or customs law violation. Currently, when a State Police officer makes an arrest, the offender can be held in a state correctional facility. Increases in state detention expenditures will depend on the number of undocumented aliens identified and taken for holding, offenses committed by the arrested, and where program-trained officers take identified undocumented aliens. Actual increases in expenditures is indeterminable.

Additionally, officers trained under the grant program may have a responsibility to report criminal unauthorized aliens to the U.S. Department of Homeland Security or Immigration and Customs Enforcement for deportation. If criminal undocumented aliens are deported or held temporarily for deportation hearings, then the state may not experience the full financial burden of detaining offenders. State expenditures for holding criminal unauthorized aliens will depend on federal action regarding deportation hearings.

Limited English Proficiency Programs: The bill also appropriates \$10 M per fiscal year for the biennium to the Department of Education (DOE) to provide resources for schools that have non-English speaking programs for pupils who have limited English proficiency. Total appropriations for the biennium are \$20 M for DOE.

Civil Penalty Provision: The bill increases civil penalties assessed against farming businesses that are found in violation of child labor laws. The bill specifies that a child between the ages of 12 and 14 may not work as a farm laborer unless the farm is owned by a person related to the child. [Note: Current law exempts all farm labor performed by children between the ages of 12 and 14.] The bill will increase the workload of the Office of the Attorney General to prosecute offenders found in violation. Table A, below, demonstrates the increase in the civil penalty fines assessed against violators under the legislation.

Criminal Penalty Provision: The bill modifies existing law regarding counterfeiting. The bill adds a provision that an individual who makes or distributes a forged instrument commits a Class B felony. [Note: Current law only requires a person to have in their possession more than one forged instrument which is considered counterfeiting, a Class D felony.]

Additionally, the bill changes current law pertaining to misuse of government-issued identification. Under

current law, a person that possesses, produces, or distributes a false government-issued identification document commits a Class A misdemeanor. The bill removes production and distribution from the Class A misdemeanor offense and classifies these two offenses as Class C felonies.

State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. The period of incarceration will depend on mitigating and aggravating circumstances. A Class D felony is punishable by a prison term ranging between 6 months to 3 years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging between 2 to 8 years. A Class B felony is punishable by a prison term ranging from 6 to 20 years. If offenders can be housed in existing facilities with no additional staff, the marginal cost per offender for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily. The average length of stay in Department of Correction (DOC) facilities for all Class C felony offenders is approximately 2 years and for all Class B felony offenders is approximately 3.7 years.

Background Information: Over the current biennium, the ISP is authorized to receive approximately \$20.8 M in federal funds for various programs, including Homeland Security programs. According to the Pew Hispanic Center, it is estimated there are 100,000 undocumented migrants in Indiana as of 2006.

Explanation of State Revenues: *287(g) Program:* Under the State Criminal Alien Assistance Program (SCAAP), the federal government reimburses part of state and local expenditures incurred for correctional officer salary costs for incarcerating undocumented criminal aliens. To qualify, these undocumented criminal aliens must have at least one felony or two misdemeanor convictions for violations of state or local law and be incarcerated for at least four consecutive days during the reporting period.

SCAAP payments are calculated using a formula that provides a relative share of funding to jurisdictions that apply and is based on the number of eligible criminal aliens, as determined by the U.S. Department of Homeland Security. SCAAP payments made to applicants are received as a prorated payment based on costs submitted and qualifying inmates detained. All SCAAP payments must go to a jurisdiction's general fund. The state of Indiana received \$871,000 in FFY 2008 from the SCAAP Program.

Civil Penalty Provision: Under the legislation, the state may experience an increase in the number of child labor violations and, subsequently, an increase in fines assessed against violators. The bill also increases the fine amount that may be assessed per subsequent violation. Table A describes the increase in the civil penalty fines assessed against violators under the legislation.

Table A: Civil Penalty Increases as Proposed.

| Violation | Current Penalty | Proposed Penalty | Increase |
|----------------------------------|--|---|-----------------------|
| First Offense | Warning Letter | Warning Letter | None |
| Second Subsequent Offense | \$100 per instance for each violation | \$1,000 per instance for each violation | \$900 per violation |
| Third Subsequent Offense | \$200 per instance for each violation | \$4,000 per instance for each violation | \$3,800 per violation |
| Fourth Subsequent Offense | \$400 per instance for each violation and occurs not more than 2 years after a prior violation | \$10,000 per instance for each violation and occurs not more than 2 years after a prior violation | \$9,600 per violation |

Civil Court Fee Revenue: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Criminal Penalty Provision: Criminal fines and court fees are the same for Class D and B felonies. However, more revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court. The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class C felony is \$10,000. Court fees for both misdemeanors and felonies are the same.

Explanation of Local Expenditures: *287(g) Program:* If a local law enforcement agency applies for and is approved to participate in the 287(g) program, local expenditures to train law enforcement officers will increase. Additionally, if 287(g)-trained officers increase apprehensions of criminal unauthorized aliens, local expenses for detaining offenders will increase as well. Local detention facilities may incur additional expenses if program-trained officers take identified undocumented aliens for holding in local facilities. Actual increases in local expenditures will depend on the number of trained local law enforcement officers, the number of undocumented aliens identified and taken for holding, and offenses committed by the arrested individual. The actual increase in expenditures is indeterminable.

Officers trained under the grant program may report criminal unauthorized aliens to the U.S. Department of Homeland Security or Immigration and Customs Enforcement for deportation. If this is the case and criminal undocumented aliens are either deported or temporarily held for deportation hearings, then local detention facilities may not experience the full financial burden of detaining offenders for the duration of their sentence (if convicted of misdemeanor offenses). Local expenditures for holding criminal unauthorized aliens will depend on federal action regarding deportation hearings.

Criminal Penalty Provision: If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. The maximum term of imprisonment for a Class A misdemeanor is up to one year.

Explanation of Local Revenues: *287(g) Program:* The bill provides that local law enforcement that participates in the federal 287(g) program may apply for grants through the Indiana DHS. If local law enforcement agencies apply for and are awarded grants from DHS, this may increase local revenue and will help to offset costs associated with 287(g) program participation. Increases in local revenue will depend on the grant amount awarded by DHS.

Under the SCAAP program, a portion of the costs for incarcerating or detaining undocumented criminal aliens will be reimbursed to local detention facilities provided detained individuals qualify under program guidelines. The actual amount that local detention facilities will receive is indeterminable, but will depend on qualifying expenses and criminal convictions of incarcerated undocumented criminal aliens.

Limited English Proficiency Programs: This bill will increase revenue to local school districts to provide non-English speaking programs for pupils that have limited English proficiency. Awards to a school are made based on the number of students who have limited English proficiency. Schools will see increases in revenue to the extent that they have populations that would qualify based on limited English proficiency and to the

extent they provide non-English speaking programs.

Civil Court Fee Revenue: If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Criminal Penalty Provision: No additional revenues would be expected since the court fees for misdemeanors and felonies are the same.

State Agencies Affected: DOC; Indiana State Police; DOE; DHS; Office of the Attorney General.

Local Agencies Affected: Potentially all local units.

Information Sources: Tim Brown, DOC; Indiana Sheriff's Association; U.S. Immigration and Customs Enforcement.

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